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EQUAL EMPLOYMENT OPPORTUNITIES ENFORCEMENT ACT OF 1970

AUGUST 21, 1970.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. PERKINS, from the Committee on Education and Labor, submitted the following

REPORT

together with

MINORITY AND SEPARATE VIEWS

[To accompany H.R. 17555]

The Committee on Education and Labor, to whom was referred the bill (H.R. 17555) to further promote equal employment opportunities for American workers, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment strikes out all after the enacting clause and inserts in lieu thereof a new text which appears in the reported bill in italic type.

PURPOSE OF LEGISLATION

The basic purpose of H.R. 17555 is to grant the Equal Employment Opportunity Commission authority to issue, through well established procedures, judicially enforceable cease and desist orders. The bill also proposes to broaden jurisdictional coverage by deleting existing exemptions of State and local government employees and educational institution employees connected with educational activities. The bill also deletes the exemption of Federal employees. A separate section, effective six months after enactment, relating to Federal employees is incorporated in the bill. The bill also, one year after enactment, covers employers and labor unions with 8 or more employees or members, a reduction from the present 25 employees requirement.

Background of Legislation

The Equal Employment Opportunity Commission was established under the authority of Title VII of the Civil Rights Act of 1964. Under that authority the Commission is not given the power to issue judicially enforceable orders but is limited essentially to the function of conciliation. In 1965 the Committee recommended passage of a bill supporting cease and desist authority. That bill (H.R. 10065) was acted on favorably in the House but was not taken up by the Senate. On May 8, 1968, the Senate Committee on Labor and Public Welfare reported an original bill (S. 3465) giving the Commission authority to issue binding cease and desist orders and to petition for their judicial enforcement. This bill was not acted upon by the Senate.

Time and experience have re-enforced this Committee's strongly held views of the necessity of establishing the Equal Employment Opportunity Commission as a quasi-judicial agency with authority to obtain enforcement of orders. H.R. 17555 is an effort to implement in a meaningful way the national policy of equal employment opportunity for employees without discrimination because of race, color, religion, national origin or sex.

Subcommittee Hearings

The General Subcommittee on Labor held six days of public hearings on H.R. 6228 and related bills. The principal witnesses were: Honorable William H. Brown, III, Chairman, Equal Employment Opportunity Commission; Deputy Attorney General Richard G. Kleindienst; a panel representing the Leadership Conference on Civil Rights, headed by Clarence M. Mitchell, Washington Bureau, NAACP; former Commission Chairman Clifford L. Alexander, Jr., and Irving Kater, Director, Federal Equal Employment Opportunity, U.S. Civil Service Commission.

The subcommittee concluded its consideration of the bill in executive session on May 26, 1970, voting to report the bill to the full Committee with a single amendment.

Need for the Bill

Cease and-desist authority

Despite some progress which has occurred since the passage of the Civil Rights Act of 1964, Negroes and other minority groups continue to be denied equal employment opportunity. A redeclaration and implementation of a national policy on equal employment opportunity, predicated upon individual merit, competence, and capability, is of paramount importance at this stage of U.S. history. It is also imperative that effective enforcement authority be granted to the Commission. While the justification for this is not new, it is compelling. The history of similar programs established without enforcement provisions is proof enough. A hollow declaration of rights without the means of asserting such rights is a sham which degrades the law and makes a mockery of the declared national policy.

The bill is a result of the committee's determination that:

(a) Job discrimination both on the part of management and labor is extant in almost every area of employment and in every area of the country. It ranges in degree from patent rejection to more subtle forms of invidious distinctions. Most frequently it manifests itself through relegation to "traditional" positions and through discriminatory promotional practices.

(b) Employment agencies and services continue to refer applicants for job opportunities in a discriminatory manner. Such discrimination also manifests itself in various forms, from outright refusal to deal with minority group applicants to refusal to refer such applicants for specific jobs due to expressed agreements, or tacit understandings and assumptions based upon traditional practices.

(c) Unfair discrimination in employment opportunities is costly to the Nation.

(1) Underutilization of the Nation's manpower resources prevents the attainment of full national productivity and economic growth. The continuing progress of our democratic society depends on the effective use of the resources of all its people. The full employment of all talents and abilities, the unrestricted use of every individual at the level of his highest skill benefits the employee, the employer, and the Nation. Ineffective utilization of manpower poses a distinct threat to the Nation's ability to maintain its competitive economic position in the world.

(2) Current discrimination in employment opportunities has long-range adverse effects upon the economy through disillusionment of youths. Perceiving discrimination against adults, youths are discouraged from attempting to prepare for useful careers believing that they will meet with the same rejection. Such destruction of motivation frequently leads to poor performance in school, increased school dropouts, perpetuation of skill and knowledge deficiencies, unemployment, juvenile delinquency, adult crime, and increased welfare costs. Not only does this decrease the potential output of the country, it also acts as a drain upon existing growth by the unnecessary addition of crime and welfare costs.

(3) Any discrimination in apprenticeship training programs, in management trainee programs, in employer-sponosred educational programs, and in other programs aimed at improving the skills, knowledge, and capability of individuals, perpetuates the existing system of widespread discrimination and uneconomic use of manpower if not immediately remedied.

(d) Discrimination in employment, as one phase of the total civil rights problem, has its international implications. Each incident pointing up our deficiencies in extending to all of our citizens full and equal rights and opportunities casts doubt upon our sincerity and motives in the international sphere.

(e) Testimony before the committee has indicated that effective Federal legislation is necessary despite the existence of fair employment practice laws in many States. First, many millions of individuals are not protected by State laws. Second, State laws vary in coverage and effectiveness. Third, State commissions have encountered difficulty in dealing with large, multiphased operations of business in interstate

commerce. Fourth, Federal responsibility, as well as authority, extends to activities and industries affecting commerce, particularly as a consequence of the expanded economic role of the Federal Government which financially supports many economic activities and, therefore, related practices.

(f) In brief, the committee found that employment practices commonly failed to conform to the written tradition and professed position of our Nation as regards the venerable principles of liberty, equality of opportunity, and the immutable dignity of man. To restore these principles to practice, to transform theory into reality, to assure that great words become implemented acts, is substantially the purpose of this act with respect to employment opportunities.

The failure to fulfill the commitment of equal employment opportunity made in 1964 is undoubtedly related to the ineffectiveness of Title VII. While the Commission is authorized to conciliate, it is devoid of sanctions and enforcement authority. The right of individuals to file suit following unsuccessful conciliation is meaningless. Few employees have the resources or ability to successfully pursue a Federal law suit. While the Department of Justice is authorized to institute practice or pattern suits, the record of the Department has not been impressive. The Department has limited manpower and other resources and has other burdensome responsibilities under the Civil Rights Act of 1964. It has therefore not accorded priority to equal employment opportunity suits.

Facts, statistical evidence and experience demonstrate that employers, labor organizations, employment agencies and joint labor-management committees continue to engage in conduct which contravenes the provisions of Title VII. The existence of such practices demonstrates the need to make Title VII more effective.

The present bill empowers the Commission to issue complaints and hold hearings, to issue cease and desist orders against discriminatory practices, and to seek enforcement of its orders in the Federal courts. Comparable powers are now exercised by many Federal agencies such as the National Labor Relations Board, the Federal Power Commission and the Federal Trade Commission, as well as the vast majority of State Fair Employment Practices Commissions. An important consequence of granting the Commission authority to issue cease and desist orders will be the enhancement of the Commission's ability to obtain successful conciliation. Experience of State Fair Employment Practices Commissions has shown that when cease and desist power is available, achievement of voluntary compliance is much more likely.

Discrimination today is much more subtle than in the past. Increasingly the Equal Employment Opportunity Commission must handle cases involving institutionalized and highly sophisticated systems for selecting and promoting workers. Their discriminatory character may not appear obvious on the surface. These complex patterns are not unlike those faced by the National Labor Relations Board and other administrative agencies. It is this committee's judgment that these complex problems can best be resolved by an agency which can develop expertise and an understanding of the peculiarities of particular industries and covert arrangements.

During the first four years of its existence the Commission has received 44,000 charges. Approximately 56% complained of discrimina-

tion because of race and 23% were concerned with sex discrimination. The remainder of the charges involved alleged discrimination because of national origin and religion. Of the 27,000 charges that were recommended for investigation, reasonable cause was found in 63% of the cases, but only in less than half of these cases was the Commission able to achieve a totally or even partially successful conciliation. Chairman Brown in his testimony remarked after citing these statistics:

> It can readily be seen that the existing law is seriously deficient. A respondent determined to maintain the status quo need only resist exhortations to change his ways and take refuge in the knowledge that eventually the Commission must withdraw.
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> In most cases, the possibility of a pattern or practice suit being brought by the Attorney General may be discounted for the simple reason that the Justice Department must be very selective in expending its resources. All that an intransigent respondent has to fear is the unlikely possibility that whomever he has discriminated against will take him to court. This has happened in less than 10 percent of the cases where we found reasonable cause and attempts at conciliation were unsuccessful.

Notwithstanding Title VII, discrimination against women continues to be prevalent. The U.S. Department of Labor this year released a report indicating a clear-cut "earnings gap" between men and women. Ten years ago women made 60.8% of the salaries men made; in 1968, the percentage was only 58.2% of what men made. Yet, women are better educated than ever before and constitute 38% of the work force.

Only 8% of full time male workers in 1968 earned less than $3,000, while 20% of full time female workers were at that level. Sixty percent of women, but only twenty percent of men earned less than $5,000. At the other end of the scale, only 3% of women but 28% of men had earnings of $10,000 or more. Equal employment opportunity for women simply does not exist. Yet, women work for the same reasons as men: to support themselves, their families and other dependents.

Not only do such facts point to economic deprivation for women but they also reveal that women are deprived of self-fulfillment and development simply on the basis of sex. Studies indicate that women are deliberately placed in less challenging, less responsible, and less remunerative positions on the basis of sex alone.

The Equal Employment Opportunity Commission has progressively involved itself with problems of sex discrimination. It has issued new and more comprehensive and significant guidelines on sex discrimination. However, its concern has been of little aid, since the Commission presently does not have the power to issue cease and desist orders.

FEDERAL EMPLOYEES

The Federal service is an area where equal employment opportunity is of the highest importance. Americans traditionally measure the quality of their democracy by the opportunity they have to participate

in governmental processes. Notwithstanding Executive Order 11246, issued in 1964, and Executive Order 11478, issued by President Nixon in 1969, substantial evidence exists that serious employment discrimination exists on the Federal level. No justifications can exist for not affording Federal employees the same rights and impartial treatment which the law seeks to afford employees in the private sector.

President Nixon proclaimed on August 8, 1969, in his memorandum accompanying Executive Order 11478, "discrimination of any kind based on factors not relevant to job performance must be eradicated completely from Federal employment." Nevertheless, the executive branch's commitment to equal employment opportunity has remained largely in the planning stage. To make matters worse, the Civil Service Commission has persisted in the use of paper and pencil tests and unreasonably high education and experience requirements which have no validity whatsoever as predictors of job performance. The Civil Service Commission has never sought to validate any of its written tests. These practices have seriously aggravated the problem, as they result in a kind of institutionalized discrimination, operating to the disadvantage of minority groups, who historically have been deprived of the normal educational experiences provided by our society.

One of the most damaging and degrading forms of discrimination in the Federal sector is the denial of promotions to minority groups and to women. This is damaging not only to the civil servant who must suffer the consequence of his supervisor's prejudice, but also to government at whose expense talent is wasted and to every member of a minority group who bitterly learns that the merit system does not apply to him.

Disclosure that few minority group members or women are in supervisory positions in the Federal service prompted the current public outcry.

According to the Civil Service Commission's own records, minorities are underrepresented in all positions above GS–8. Thus, in policy making and supervisory level jobs minority group employment is at a relatively low level. Although by the end of 1967 minority group members accounted for 18.9 percent of all full-time employees of the Federal Government, more than half of all minority group members employed were at a GS–4 level or below, while barely one fourth of all other employees were on comparable levels. Minority group members employed on a GS–9 level or above accounted for less than one fifth of the total minority group employment, while almost half of all other employees were at those levels.

Negroes constitute most of the minority group employees. A 1967 Commission report indicates that 14.9 percent of the full-time employees of the Federal Government were black, an increase of 1.9 percent since 1962. Although the percentage increase was greater at higher GS levels, the relative percentage of Negroes at these levels remains low, with Negroes accounting for only 1.8 percent of Federal employees at a GS–12 level or above. This relative percentage increases as the GS level decreases, with a maximum of 20.5 percent in the four lowest grades. Clearly equal opportunity employment in promotion and hiring at the higher grade levels is not the current practice.

Furthermore, there are differences in the extent of Negro employment among different agencies. Twenty-four percent of Department of Labor employees are Negro, including 6.8 percent at the GS–12 level or above. At the other extreme, only 2.9 percent of the National Aeronautics and Space Administration employees are Negro, including 0.8 percent of its employees at the GS–12 level or above. Consequently, while it is difficult to generalize about the performance of government agencies, the Civil Service Commission's own statistics show that there have been no major advances toward the solution of the problem.

In 1967, 87 percent of all black general schedule employees were in grades 1 through 8; 76 percent of all Mexican-American GS employees were in grades 1 through 8; and 83 percent of all Indians were in grades 1 through 8. The above compares with 56 percent of grades 1 through 8 of all employees. For example, in five southwestern States the Department of Interior employed 3,650 persons in grades 12–18 of which only 35 had Spanish surnames. Similar patterns of discrimination exist within the wage board and postal categories.

Too frequently sound policies established at the decisionmaking level of the Civil Service Commission and other Federal agencies do not penetrate effectively lower levels of administration resulting in little or no action to effectuate nondiscriminatory practices.

It is safe to predict that we will never really correct the entrenched discrimination that exists in the Federal service until there are uniform, fair and strongly enforced policies of nondiscrimination that apply to government as well as to private industry. The present law and the statute proposed do not permit industry and labor organizations to be the judges of their own conduct in the area of employment discrimination. There is no reason why government agencies should not be bound by the same rule. Indeed, the government itself should set the example by being willing to have its action reviewed by an impartial tribunal in a forum where all parties have equal rights to a fair hearing and meaningful redress.

Despite the series of executive and administrative directives on equal employment opportunity, Federal employees, unlike those in the private sector to whom Title VII is applicable, face legal obstacles in obtaining meaningful remedies. There is serious doubt that court review is available to the aggrieved Federal employee. Monetary restitution or back pay is not attainable. In promotion situations, a critical area of discrimination, the promotion is often no longer available. Information and documents contained in Government files are not obtainable since the Freedom of Information Act exempts internal personnel rules. Under the proposed law, court review, back pay, promotions, reinstatement, and appropriate affirmative relief is available to employees in the private sector; also the Commission has broad powers to conduct an intensive investigation and obtain access to all pertinent records.

The Commission is established as a government administrative agency to protect employees against discrimination. This agency under the proposed law assumes the burden and expense of litigation to obtain adequate redress for the employee. These substantial benefits and protections are not presently available to the Federal employee. Presently the Federal employee is entirely dependent on his own resources and does not have recourse to an impartial governmental agency with

developed expertise. Hence the bill requires transfer of the equal employment opportunity functions of the Civil Service Commission to the Equal Employment Opportunity Commission.

Under the committee bill not only an employee in the private sector but also an employee of a Federal agency may have resort to a civil action if he is not satisfied with the action of his employer and the disposition of his complaint. These amendments fulfill a need disclosed to the committee by testimony for establishing confidence among employees in the Government's equal employment opportunity program.

STATE AND LOCAL GOVERNMENT EMPLOYEES

There are approximately 9.5 million persons employed in 81,000 State and local governmental units. Few of these employees have the protection of an effective equal employment opportunity program. The 14th Amendment guaranteed equal treatment of all citizens by States and their political subdivisions. Too often the last sentence of the Amendment enabling Congress to enforce the provision "by appropriate legislation" is overlooked.

The U.S. Civil Rights Commission's report "For All the People * * * By All the People" examines equal opportunity in public employment in seven urban areas located throughout the country—North as well as South. The report finds that in the areas studied, widespread discrimination against minority group members exists in State, city, and suburban government employment.

In some cases, the report finds, jobs requiring little skill and offering scant chance of advancement are regarded as "Negro jobs" and are held primarily by black workers. In six of the seven areas studied, Negroes constitute over 70 percent of the common laborers. On the other hand, most white-collar jobs—with the exception of health, welfare, and others concerned with minority group problems—were found to be considerably more inaccessible to minority persons. This imbalance was found to be attributable in large measure to a wide variety of discriminatory practices in hiring, placement, and promotion.

The existence of these denials of equal access to employment opportunity is evidence that State personnel agencies have failed to monitor their own programs effectively.

"For ALL the People * * * By ALL the People" concludes as follows:

> The basic finding of this report is that State and local governments have failed to fulfill their obligation to assure equal job opportunity * * *. Not only do State and local governments consciously and overtly discriminate in hiring and promoting minority group members, but they do not foster positive programs to deal with discriminatory treatment on the job.

Given the widespread continuance of these discriminatory practices, there is no justification for continuing to withhold the much-needed protection of Title VII from employees of State and local governments.

At present a public employee can, of course, assert his right under the Constitution to bring a suit in court for discrimination in public

employment. However, experience has shown that it is unrealistic to expect individuals to bear this burden.

Employment litigation is expensive and time consuming. Further, it is not normally undertaken by individuals who may be afraid of the courts, who cannot afford time off from work, or who are afraid of losing their jobs. As a practical matter, such enforcement is no enforcement at all.

The State and local governments constitute the only large group of employees in the Nation who are almost entirely exempt from Federal nondiscrimination protections—except for the seldom-enforced equal protection requirements of the 14th amendment.

The Commission report pinpointed bias in all eight cities surveyed. Black and Spanish-surnamed Americans were found concentrated in common-laborer jobs, while few were represented among the officials and managers. In Atlanta and Baton Rouge, for instance, there were no blacks in city managerial jobs.

Among some government officials there appears to be no motivation, either legal or moral, to aim at equality of employment opportunity.

Inasmuch as State, county, and municipal government represents the fastest-growing employment sector in the country, the continuation of discrimination against minorities in this area is inimical to the interests not only of citizens so injured, but to the economy as a whole.

EDUCATIONAL INSTITUTION EMPLOYEES

The present Section 702 of Title VII exempts educational institutions—essentially teachers—from the equal employment requirement of that Title. We find that this contributes to discrimination because of race, color, religion, national origin, and sex.

There is nothing in the legislative background of Title VII nor does any national policy suggest itself to support the exemption of educational institution employees from Title VII coverage.

EMPLOYERS AND LABOR UNIONS WITH EIGHT OR MORE EMPLOYEES OR MEMBERS

Discrimination in employment opportunity is contrary to national policy and invidious whether practiced by small or large employers. The bill within one year of enactment, provides for coverage of employers with eight or more employees and labor unions with eight or more employees or members. Presently only employers and labor unions with 25 or more employees or members are covered. This amendment will bring many millions of employees within protection of Title VII and extends the policy of equal employment opportunity to those to whom it is now an empty phrase.

Major Provisions of the Act

(a) Sections 2 and 3 of the Act expand Title VII's reach to include State and municipal governments, and educational institutions. This will provide coverage for approximately nine and one half million persons who are currently inadequately protected, or not protected at all. In addition, Section 2 expands the definitions of "employer"

and "labor organization" to include employers and labor organizations with eight or more employees or members. This will bring another nine and one half million persons under the aegis of the Act, and in view of the additional burden the Commission will have to assume in terms of workload, is delayed for one year after the effective date of the Act. The Committee contemplates that these revisions alone will require a substantial increase in appropriations if the Commission is to be able to implement its mandate.

(b) Section 4 significantly revises the primary enforcement provisions of the Title. If conciliation efforts are unsuccessful, the Commission is authorized to issue complaints, hold hearings and where unlawful employment practices are found, make appropriate orders which may be enforced in the courts of appeals. This will remove the burden of enforcing the provisions of the Act from the shoulders of the disadvantaged, and place it with the government as is appropriate in a remedial statute. Certain other changes in the filing and referral provisions of Sections 706 (a), (b), and (e) are made which are designed to facilitate the efficient and equitable adjudication of Title VII grievances.

(c) The Commission's relationship to State and local fair employment practices agencies is streamlined by Section 5 in accordance with the last five years' experience. The focus of the primary reporting responsibility in Section 709 of Title VII is changed from State and local agencies to the Commission. Employers and labor organizations in FEPC States will no longer be exempted from filing reports with the Federal agency, but the latter will be required to provide information thus gathered to State and local agencies free of charge. This is in line with the concept of inter-governmental cooperation stressed by the Act, and will facilitate a viable, *national* reporting system while at the same time avoiding unnecessary overlap and duplication of effort.

(d) Section 7 confers the investigatory authority found in the language of the National Labor Relations Act on the Commission, and provides that subpenas shall not be issued to parties to a proceeding before the Commission prior to the issuance of a complaint. The latter is intended to protect respondents from "fishing expeditions" on the part of private individuals, and is not meant to imply any restriction on the Commission's exercise of its own authority as a regulatory agency with adjudicatory and accusatory powers.

(e) Section 8 perfects Title VII's provisions with respect to testing and apprenticeship training. With regard to testing, the amendment is limited to tests for particular positions; it is not intended to apply to tests given to ascertain potential ability to undertake apprenticeship or other learning capacities. Of course, tests given for apprenticeship and related status must satisfy the requirement that the test, its administration or action upon the results, is not designed, intended, or used to discriminate because of race, color, religion, sex or national origin. While the Commission's interpretation of the current provisions of Title VII in these regards is incontrovertibly correct, the Committee believes it appropriate to alleviate any danger of confusion that might arise due to isolated cases decided to the contrary in inferior Federal courts. This concern is specifically directed at the decision of

the Court of Appeals for the Fourth Circuit in *Griggs* v. *Duoke Power*, —— F.2d —— (C.A. 4 1970), *cert. granted* June 23, 1970. Section 8 also provides for the organization of the Commission under its revised procedures, and, significantly, preserves the private right of action presently found in Section 706. The Committee is of strong opinion that the right of aggrieved individuals to pursue their rights in the Federal courts is of the highest priority, and must be preserved.

(f) Section 11 transfers the equal employment opportunity responsibility of the Civil Service Commission to the Equal Employment Opportunity Commission. Broad discretion is left to the latter's expertise and judgment as to the most appropriate means of exercising its responsibility. The rights of aggrieved individuals are preserved in a private right of action, however, should the Commission be unable to provide appropriate and speedy relief.

SECTION-BY-SECTION ANALYSIS

The chronological order of the bill is followed. Section headings in italic indicate sections of the bill. Section headings in bold type refer to sections of the Act, as it would be amended by the bill.

Section 1

This section contains the enacting clause and style of the Act.

Section 2. Jurisdiction

Section 701—Comparable to present Section 701. The provisions of the Act are extended to include employers of eight or more persons, labor organizations with eight or more members, and States and their political subdivisions.

Section 3. Educational Institutions

Section 702—Comparable to present Section 702. The exemption currently provided to educational institutions is deleted.

Section 4. Employment

Section 706(a)—New Section. The Commission is empowered to prevent any person from engaging in any unlawful employment practice as set forth in Sections 703 or 704.

Section 706(b)—Comparable to present Section 706(a). The requirement that aggrieved persons charges be made under oath is deleted. Charges shall contain such information as the Commission requires, and Commissioner's charges do not have to be based on a reasonable cause to believe that a violation has occurred. Charges may also be filed on behalf of persons aggrieved. The Commission shall make its finding as to reasonable cause as promptly as possible, and so far as is practicable, not later than 120 days from the filing of the charge, or when deferral is applicable under subsection (c) or (d), from the date on which the Commission is authorized to take action with respect to the charge. If reasonable cause is not found, the Commission shall dismiss the charge, giving prompt notification to the parties. The conciliation and confidentiality provisions are retained.

Section 706(c)—Comparable to present Section 706(b). Charges of persons in FEPC States may be filed with the Commission, but the latter may take no action until 60 days after commencement of proceedings in the appropriate State or local agency (120 days if a new agency). The latter proceeding shall be deemed to have commenced at the time a written statement of the facts is sent to such agency by *certified* mail.

Section 706(e)—Comparable to present Section 706(d). The 90 day filing period is expanded to 180 days, and the 210-day period to 300 days (or 30 days after receiving notice of termination of proceedings, whichever comes earlier). Provision is added requiring that a copy of the charge be served on the respondent as soon as practicable after filing.

Section 706(f)—Comparable to present Section 706(e). After attempting to secure voluntary compliance under subsection (b), if the Commission determines (which determination is not reviewable in any court) that it is unable to secure from the respondent a conciliation agreement acceptable to the Commission and to the person aggrieved, the Commission shall issue and cause to be served upon the respondent a complaint stating the facts upon which the allegation of the unlawful employment practice is based, together with a notice of hearing before the Commission, or a member or agent of it, at a specified place not less than 5 days after service of the complaint and notice. Any member of the Commission who filed a charge in any case shall not participate in a hearing on any complaint arising out of such charge, except as a witness.

Section 706(g)—New Section. Respondent has the right to file an answer to the complaint and with the Commission's permission, may amend his answer at any time if deemed reasonable. Respondent and the person aggrieved shall be parties and may appear at any stage of the proceedings with or without counsel. The Commission may grant others the right to intervene or file briefs or make oral arguments as *amicus curiae*, or for other purposes as it considers appropriate. All testimony shall be taken under oath and shall be reduced to writing.

Section 706(h)—New Section. If the Commission finds that respondent has engaged in an unlawful employment practice, the Commission shall state its findings of fact and shall issue and cause to be served upon the respondent and aggrieved person an order requiring the respondent to cease and desist from such unlawful employment practice and take such affirmative action (including reinstatement or hiring with or without back pay) as will effectuate the policies of the Act. Interim earnings or amounts earnable with reasonable diligence operate to reduce the backpay otherwise allowable. Such order may further require the respondent to make reports from time to time showing the extent to which he has complied with the order. If the Commission finding is that no unlawful employment practice occurred, it shall state its findings of fact and so notify the respondent and complainant of an order dismissing the complaint.

Section 706(i)—New Section. After a charge has been filed and until the record has been filed in court, the proceedings may at any time be ended by agreement between the Commission and the parties and the Commission may at any time, upon reasonable notice, modify or set aside, in whole or in part, any order or finding issued or made by it. An agreement approved by the Commission shall be enforceable under subsection (k).

Section 706(j)—New Section. Findings of fact and order made or issued under subsection (h) or (i) shall be determined on the record.

Section 706(k)—New Section. The Commission may petition any U.S. Court of Appeals wherein whose circuit the unlawful employment practice occurred or wherein respondent resides or transacts

business, for enforcement of its order and for appropriate temporary relief or restraining order. The Commission shall file in the court the record of its proceedings as provided in section 2112 of title 28 of the U.S. Code. Upon serving notice on the parties, the court shall have jurisdiction and the power to grant such temporary relief, restraining order, or other order as it deems just and proper and enter upon the record a decree enforcing, modifying, and enforcing as so modified or setting aside in whole or in part the order of the Commission. No objection that has not been urged before the Commission, its member, or its agent shall be considered by the court except under extraordinary circumstances. The findings of the Commission with respect to questions of fact shall be conclusive if supported by substantial evidence on the record considered as a whole. The court may order additional evidence taken by the Commission, which may then modify its fact findings. Upon the filing of the record with it, the jurisdiction of the court shall be exclusive and its judgment and decree final, subject only to review by the Supreme Court.

Section 706(l)—New Section. Any party aggrieved by a final order of the Commission may obtain review of such order in any U.S. Court of Appeals in the circuit wherein the unlawful employment practice was alleged to have been engaged in or wherein such person resides or transacts business, or in the D.C. Court of Appeals. Upon receiving a copy of such petition, the Commission shall file in the court the record of its proceedings, and the court shall then proceed in the same manner as in the case of a petition by the Commission under subsection (k). Commencement of proceedings under this subsection or subsection (k) shall not operate as a stay of the Commission's order.

Section 706(m)—New Section. The provisions of 29 U.S.C. 101–115 with respect to preliminary injunctions are made inapplicable to judicial proceedings under the Title.

Section 706(n)—New Section. The general counsel of the Commission shall conduct all litigation affecting it, or to which it is a party, except that the Attorney General shall conduct all litigation to which the Commission is a party in the Supreme Court.

Section 706(o)—New Section. When after the filing of a charge, the Commission concludes on the basis of a preliminary investigation that prompt judicial action is necessary to preserve the power of the Commission to grant effective relief, it may bring an action for appropriate temporary or preliminary relief in the district court for the district where the unlawful employment practice is alleged to have been committed, or in the district where the aggrieved person would have been employed, or if the respondent cannot be found in these districts, in the district where the respondent has his principal office. Upon the bringing of such action, the district court may grant such injunctive relief or temporary restraining order as it deems just and proper, as governed by Rule 65 of the FRCP.

Section 5. Records Required To Be Kept and Investigations.

Section 707(c)—New Section. Any record or paper required by section 709(c) shall be made available to the Commission or the Attorney General or his representative on written demand, for purposes of inspection and copying, but unless otherwise ordered by a court of the United States, neither the Commission or the Attorney General nor his

representative shall disclose any information thus obtained except to Congress or any committee thereof, a governmental agency, or in the presentation of any case or proceeding before any court or grand jury. The appropriate district court may compel the production of such records or papers.

Section 6. State and Local Agencies, Recordkeeping.

Section 709(b)—Comparable to present Section 709(b). The contracts to State and local agencies language is enlarged to include Commission contributions to research and other projects of mutual interest, and payments to State and local agencies may be made in advance as well as in reimbursement. The provisions concerning agreements whereby no civil actions may be brought is omitted.

Section 709(c)—The Section 709(d) reporting exemption is deleted, and the hardship language is changed to require that persons or organizations alleging hardship must exhaust the relief processes provided by the Commission before applying for relief in the district court.

Section 709(d)—Deletes this (present subsection, and in its place provides that the Commission shall consult with other interested State and Federal agencies and shall endeavor to coordinate its requirements with those of such other agencies. The Commission shall furnish information obtained pursuant to subsection (c) of this section without cost to any State or local FEPC on request, except that public disclosure of such information provided on the part of such State or local agency prior to the institution of a proceeding under State or local law shall be grounds for declining to honor subsequent requests pursuant to this subsection.

Section 7. Commission Investigations.

Section 710—Comparable to present Section 710. Incorporates the provisions of section 11 of the NLRA (29 U.S.C. 161). The Commission shall have access to and the right to copy evidence of a person being investigated or proceeded against that relates to the matter under investigation or in question. It shall issue subpenas to parties on application requiring the presence and testimony of witnesses and the production of evidence as specified in such application. Within 5 days of service, the person served may petition the Commission to revoke its subpena on grounds that the evidence sought is not relevant to the matter in question. Attendance of witnesses and the production of evidence may be required from any place in the United States or its possessions, and any Federal court with jurisdiction may enforce such subpenas by order. Witnesses may not refuse to answer questions on grounds of self incrimination, but may not be subsequently proceeded against on the basis of information thus gained. Complaints, orders and other processes may be served personally or by registered mail or telegraph, or by leaving a copy at the principal office of the person to be served. No subpena shall be issued to any party to a proceeding before the Commission until after the respondent has been served a copy of the complaint and notice of hearing under section 706(f). Witnesses and persons making depositions shall receive the same mileage and fees as witnesses and persons making depositions in the district courts.

Section 8. Selection Procedures, Apprenticeship Programs, Commission Organization.

Section 703(a)(2)—Comparable to present Section 703(a)(2). Adds "or applicants for employment" after "employees."

Section 703(c)(2)—Comparable to present Section 703(c)(2). Adds "or applicants for membership" after "membership."

Section 703(h)—Comparable to present Section 703(h). Retains the seniority and merit system language, but changes the testing provisions to stipulate that such tests must be directly related to the determination of bona fide occupational qualifications reasonably necessary to perform the normal duties of the particular position concerned. The provision prohibiting tests designed or used to discriminate on the basis of race, color, religion, national origin, or sex is retained.

Section 704(a)—Comparable to present Section 704(a). Adds "or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs" after "employment agency."

Section 704(b)—Comparable to present Section 704(b). Adds "joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs" to the list of proscribees.

Section 705(a)—Comparable to present Section 705(a). Amends the Section to include "members of the Commission shall continue to serve until their successors are appointed and qualified," provided that no such member shall continue to serve for more than 60 days when the Congress is in session unless a nomination to fill the vacancy has been submitted to the Senate, or after the adjournment sine die of the session of the Senate in which such nomination was submitted. The section also adds "hearing examiners" to the appointments of the Chairman may make in accordance with title 5, U.S.C. on behalf of the Commission, and provides that assignment, removal, and compensation of such hearing examiners shall be in accordance with sections 3105, 3344, 5362, and 7521 of title 5, U.S.C. Section 3105 provides for the appointment of the necessary number of hearing examiners, requires that they be assigned to cases in rotation, and stipulates that they may not be assigned duties that are inconsistent with their position as hearing examiners. Section 3344 authorizes an agency's use of hearing examiners from other agencies as selected by the Civil Service Commission if the borrowing agency is short staffed. Section 5362 states that such hearing examiners are entitled to the pay prescribed by the Civil Service Commission for them independently of agency recommendations or ratings, in accordance with subchapter III and chapter 51 of title 5, U.S.C. Section 7521 allows removal of hearing examiners only for good cause established and determined by the Civil Service Commission on the record after hearing.

Section 705(g)(6)—Comparable to present Section 706(g)(6). Substitutes Section "715" for Section "706."

Section 705(g)(1)—Comparable to present Section 705(g)(1). Adds "and to accept voluntary and uncompensated services, notwithstanding that provisions of section 3679(b) of the Revised Statutes" ter the word "individuals."

Section 713 (c) and (d)—New subsections. Authorizes the Commission to delegate its powers with respect to investigating, conciliating, hearing, determining, ordering, certifying, reporting, or otherwise acting to such persons as the Commission may designate by regulation, with certain exceptions concerning the power to issue cease and desist orders, the power to modify or set aside its findings under subsections (i) and (k) of Section 706, certain aspects of the rulemaking powers, and the power to enter into or rescind agreements with State and local agencies as provided in subsection (b) of Section 709. The Commission is specifically not authorized to provide for persons other than those referred to in section 556, subsection (b), clauses (2) and (3) of title 5, U.S.C. to conduct any hearing to which that section applies. New subsection (d) authorizes the Commission to delegate to any group of three or more of its members any or all of the powers which it may itself exercise.

Section 714—Comparable to present Section 714. Adds section 1114 of title 18, U.S.C. (murder of Commission employees).

Section 715—New Section, comparable in part to present Section 706. Deletes the provisions of the present Section 715. Provides that if the Commission dismisses a charge after a preliminary investigation indicates no cause, or on grounds of lack of jurisdiction, or if after 180 days from the filing of a charge the Commission has not made a finding of no reasonable cause or entered into a conciliation agreement acceptable to the Commission and to the person aggrieved, the Commission shall notify the aggrieved party, and within 60 days of such notification such party may bring a civil action against the respondent named in the charge. The court may appoint an attorney for such complainant, and may dispense with the payment of fees, costs, or security. It may also permit the Commission to intervene if it certifies that the cause is of general public importance. Upon the commencement of such action the Commission is divested of jurisdiction over the proceeding and may take no further action, except that the court may in its discretion stay further proceedings for not longer than 60 days pending termination of State or local proceedings, or the efforts of the Commission to obtain voluntary compliance. Subsections (b) and (c) retain the procedural provisions of present Section 706, subsections (f) and (g), while subsections (d), (e), and (f) duplicate Section 706, subsections (i), (j), and (k), the latter subsection modified to delete the exceptions of the Commission and the United States in regard to attorney's fees and to change the words "prevailing party" to "prevailing plaintiff." Present subsection (h) excepting such proceedings from the provisions of 29 U.S.C. 101-115 is retained with modified language at Section 706(m).

Section 9. Commissioners' Compensation.

Title 5, U.S.C. Add "Chairman, Equal Employment Opportunity Commission" at the end of section 5314 (Level III Positions). Add "Members, Equal Employment Opportunity Commission" to clause (72) of section 5315 (Level IV Positions). Repeal clause (III) of section 5316 (the Level V slot presently occupied by Members of the Commission).

Section 10. Pending Cases.

Sections 706 and 710 of the Civil Rights Act of 1964, as amended by this Act, shall not be applicable to charges filed with the Commission prior to the effective date of this Act.

Section 11. Federal Employers.

Section 717—New Section. All personnel actions affecting employees or applicants for employment in the competitive service of the United States or in positions of the District of Columbia Government covered by the Civil Service Retirement Act shall be made free from any discrimination based on race, color, religion, sex, or national origin.

The Commission shall enforce the nondiscrimination provisions of subsection (a), and shall issue appropriate rules, regulations, orders, and instructions. The responsibilities of the Civil Service Commission with regard to equal employment opportunity in the Federal Government are transferred to the Equal Employment Opportunity Commission.

Persons aggrieved by the final disposition of complaints may, within thirty days of receipt of notice, file a civil action in the same manner as in Section 715, in which action the head of the executive department or agency, or the District of Columbia, as appropriate, shall be the respondent.

Section 12. Effective Date of Section 11.

New Section 717, added by Section 11 of the Act shall become effective six months after the effective date of the Act.

EQUAL EMPLOYMENT OPPORTUNITIES ENFORCEMENT ACT

Showing the changes in existing law proposed to be made by the bill as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE VII OF THE CIVIL RIGHTS ACT OF 1964

TITLE VII—EQUAL EMPLOYMENT OPPORTUNITY

DEFINITIONS

SEC. 701. For the purposes of this title—

(a) The term "person" includes one or more individuals, *governments, governmental agencies, political subdivisions,* labor unions, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, or receivers.

(b) The term "employer" means a person engaged in an industry affecting commerce who has [twenty-five] *eight* [1] or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year, and any agent of such a person, but such term does not include (1) the United States, a corporation wholly owned by the Government of the United States, an Indian tribe, or [a State or political subdivision thereof] *the District of Columbia,* (2) a bona fide private membership club (other than a labor organization) which is exempt from taxation under section 501(c) of the Internal Revenue Code of 1954: *Provided,* That during the first year after the effective date prescribed in subsection (a) of section 716, persons having fewer than one hundred employees (and their agents) shall not be considered employers, and, during the second year after such date, persons having fewer than seventy-five employees (and their agents) shall not be considered employers, and, during the third year after such date, persons having fewer than fifty employees (and their agents) shall not be considered employers.

(c) The term "employment agency" means any person regularly undertaking with or without compensation to procure employees for an employer or to procure for employees opportunities to work for an employer and includes an agent of such a person; but shall not include an agency of the United States, [or an agency of a State or political subdivision of a State,] except that such term shall include the United States Employment Service and the system of State and local employment services receiving Federal assistance.

(d) The term "labor organization" means a labor organization engaged in an industry affecting commerce, and any agent of such an

[1] Effective one year after date of enactment.

organization, and includes any organization of any kind, any agency, or employee representation committee, group, association, or plan so engaged in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment, and any conference, general committee, joint or system board, or joint council so engaged which is subordinate to a national or international labor organization.

(e) A labor organization shall be deemed to be engaged in an industry affecting commerce if (1) it maintains or operates a hiring hall or hiring office which procures employees for an employer or procures for employees opportunities to work for an employer, or (2) the number of its members (or, where it is a labor organization composed of other labor organizations or their representatives, if the aggregate number of the members of such other labor organization) is (A) one hundred or more during the first year after the effective date prescribed in subsection (a) of section 716, (B) seventy-five or more during the second year after such date or fifty or more during the third year, or (C) [twenty-five] *eight* or more thereafter, and such labor organization—

(1) is the certified representative of employees under the provisions of the National Labor Relations Act, as amended, or the Railway Labor Act, as amended;

(2) although not certified, is a national or international labor organization or a local labor organization recognized or acting as the representative of employees of an employer or employers engaged in an industry affecting commerce; or

(3) has chartered a local labor organization or subsidiary body which is representing or actively seeking to represent employees of employers within the meaning of paragraph (1) or (2); or

(4) has been chartered by a labor organization representing or actively seeking to represent employees within the meaning of paragraph (1) or (2) as the local or subordinate body through which such employees may enjoy membership or become affiliated with such labor organization; or

(5) is a conference, general committee, joint or system board, or joint council subordinate to a national or international labor organization, which includes a labor organization engaged in an industry affecting commerce within the meaning of any of the preceding paragraphs of this subsection.

(f) The term "employee" means an individual employed by an employer.

(g) The term "commerce" means trade, traffic, commerce, transportation, transmission, or communication among the several States; or between a State and any place outside thereof; or within the District of Columbia, or a possession of the United States; or between points in the same State but through a point outside thereof.

(h) The term "industry affecting commerce" means any activity, business, or industry in commerce or in which a labor dispute would hinder or obstruct commerce or the free flow of commerce and includes any activity or industry "affecting commerce" within the meaning of the Labor-Management Reporting and Disclosure Act of 1959, *and further includes any governmental industry, business, or activity.*

(i) The term "State" includes a State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and Outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act.

EXEMPTION

SEC. 702. This title shall not apply to an employer with respect to the employment of aliens outside any State, or to a religious corporation, association, or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, or society of its religious activities [or to an educational institution with respect to the employment of individuals to perform work connected with the educational activities of such institution].

DISCRIMINATION BECAUSE OF RACE, COLOR, RELIGION, SEX, OR NATIONAL ORIGIN

SEC. 703. (a) It shall be an unlawful employment practice for an employer—

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or

(2) to limit, segregate, or classify his employees *or applicants for employment* in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

(b) It shall be an unlawful employment practice for an employment agency to fail or refuse to refer for employment, or otherwise to discriminate against, any individual because of his race, color, religion, sex, or national origin, or to classify or refer for employment any individual on the basis of his race, color, religion, sex, or national origin.

(c) It shall be an unlawful employment practice for a labor organization—

(1) to exclude or to expel from its membership, or otherwise to discriminate against, any individual because of his race, color, religion, sex, or national origin;

(2) to limit, segregate, or classify its membership *or applicants for membership*, or to classify or fail or refuse to refer for employment any individual, in any way which would deprive or tend to deprive any individual of employment opportunities, or would limit such employment opportunities or otherwise adversely affect his status as an employee or as an applicant for employment, because of such individual's race, color, religion, sex, or national origin; or

(3) to cause or attempt to cause an employer to discriminate against an individual in violation of this section.

(d) It shall be an unlawful employment practice for any employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job

training programs to discriminate against any individual because of his race, color, religion, sex, or national origin in admission to, or employment in, any program established to provide apprenticeship or other training.

(e) Notwithstanding any other provision of this title, (1) it shall not be an unlawful employment practice for an employer to hire and employ employees, for an employment agency to classify, or refer for employment any individual, for a labor organization to classify its membership or to classify or refer for employment any individual, or for an employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining programs to admit or employ any individual in any such program, on the basis of his religion, sex, or national origin in those certain instances where religion, sex, or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise, and (2) it shall not be an unlawful employment practice for a school, college, university, or other educational institution or institution of learning to hire and employ employees of a particular religion if such school, college, university, or other educational institution or institution of learning is, in whole or in substantial part, owned, supported, controlled, or managed by a particular religion or by a particular religious corporation, association, or society, or if the curriculum of such school, college, university, or other educational institution or institution of learning is directed toward the propagation of a particular religion.

(f) As used in this title, the phrase "unlawful employment practice" shall not be deemed to include any action or measure taken by an employer, labor organization, joint labor-management committee, or employment agency with respect to an individual who is a member of the Communist Party of the United States or of any other organization required to register as a Communist-action or Communist-front organization by final order of the Subversive Activities Control Board pursuant to the Subversive Activities Control Act of 1950.

(g) Notwithstanding any other provision of this title, it shall not be an unlawful employment practice for an employer to fail or refuse to hire and employ any individual for any position, for an employer to discharge any individual from any position, or for an employment agency to fail or refuse to refer any individual for employment in any position, or for a labor organization to fail or refuse to refer any individual for employment in any position, if—

(1) the occupancy of such position, or access to the premises in or upon which any part of the duties of such position is performed or is to be performed, is subject to any requirement imposed in the interest of the national security of the United States under any security program in effect pursuant to or administered under any statute of the United States or any Executive order of the President; and

(2) such individual has not fulfilled or has ceased to fulfill that requirement.

(h) Notwithstanding any other provision of this title, it shall not be an unlawful employment practice for an employer to apply different standards of compensation, or different terms, conditions, or privileges of employment pursuant to a bona fide seniority or merit system, or a system which measures earnings by quantity or quality of

production or to employees who work in different locations, provided that such differences are not the result of an intention to discriminate because of race, color, religion, sex, or national origin, nor shall it be an unlawful employment practice for an employer to give and to act upon the results of any professionally developed ability test [provided that] *which is directly related to the determination of bona fide occupational qualifications reasonably necessary to perform the normal duties of the particular position concerned: Provided, That* such test, its administration or action upon the results is not designed, intended, or used to discriminate because of race, color, religion, sex, or national origin. It shall not be an unlawful employment practice under this title for any employer to differentiate upon the basis of sex in determining the amount of the wages or compensation paid or to be paid to employees of such employer if such differentiation is authorized by the provisions of section 6(d) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 206(d)).

(i) Nothing contained in this title shall apply to any business or enterprise on or near an Indian reservation with respect to any publicly announced employment practice of such business or enterprise under which a preferential treatment is given to any individual because he is an Indian living on or near a reservation.

(j) Nothing contained in this title shall be interpreted to require any employer, employment agency, labor organization, or joint labor-management committee subject to this title to grant preferential treatment to any individual or to any group because of the race, color, religion, sex, or national origin of such individual or group on accoun of an imbalance which may exist with respect to the total number or percentage of persons of any race, color, religion, sex, or national origin employed by any employer, referred or classified for employment by any employment agency or labor organization, admitted to membership or classified by any labor organization, or admitted to, or employed in, any apprenticeship or other training program, in comparison with the total number or percentage of persons of such race, color, religion, sex, or national origin in any community, State, section, or other area, or in the available work force in any community, State, section, or other area.

OTHER UNLAWFUL EMPLOYMENT PRACTICES

SEC. 704. (a) It shall be an unlawful employment practice for an employer to discriminate against any of his employees or applicants for employment, for an employment agency *or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs,* to discriminate against any individual, or for a labor organization to discriminate against any member thereof or applicant for membership, because he has opposed any practice made an unlawful employment practice by this title, or because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this title.

(b) It shall be an unlawful employment practice for an employer, labor organization, [or employment agency] *employment agency, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs,* to print or publish or cause to be printed or published any notice or advertisement relating to employment by such an employer or membership in or any classification or referral for employment by such a labor organization, or relating to any classification or referral for employment by such an employment agency, *or relating to admission to, or employment in, any program established to provide apprenticeship or other training by such a joint labor-management committee* indicating any preference, limitation, specification, or discrimination, based on race, color, religion, sex, or national origin, except that such a notice or advertisement may indicate a preference, limitation, specification, or discrimination based on religion, sex, or national origin when religion, sex, or national origin is a bona fide occupational qualification for employment.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

SEC. 705. (a) There is hereby created a Commission to be known as the Equal Employment Opportunity Commission, which shall be composed of five members, not more than three of whom shall be members of the same political party, who shall be appointed by the President by and with the advice and consent of the Senate. One of the original members shall be appointed for a term of one year, one for a term of two years, one for a term of three years, one for a term of four years, and one for a term of five years, beginning from the date of enactment of this title, but their successors shall be appointed for terms of five years each, except that any individual chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he shall succeed, *and all members of the Commission shall continue to serve until their successors are appointed and qualified: Provided, That no such member of the Commission shall continue to serve (1) for more than sixty days when the Congress is in session unless a nomination to fill such vacancy shall have been submitted to the Senate, or (2) after the adjournment sine die of the session of the Senate in which such nomination was submitted.* The President shall designate one member to serve as Chairman of the Commission, and one member to serve as Vice Chairman. The Chairman shall be responsible on behalf of the Commission for the administrative operations of the Commission, and shall appoint, in accordance with the [civil service laws, such officers, agents, attorneys, and employees as it deems necessary to assist it in the performance of its functions and to fix their compensation in accordance with the Classification Act of 1949, as amended] *provisions of title 5, United States Code, governing appointments in the competitive service, such officers, agents, attorneys, hearing examiners, and employees as he deems necessary to assist it in the performance of its functions and to fix their compensation in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification and General Schedule pay rates: Provided, That assignment, removal, and compensation of hearing examiners shall be in accordance with sections 3105, 3344, 5362, and 7521*

of title 5, United States Code. The Vice Chairman shall act as Chairman in the absence or disability of the Chairman or in the event of a vacancy in that office.

(b) A vacancy in the Commission shall not impair the right of the remaining members to exercise all the powers of the Commission and three members thereof shall constitute a quorum.

(c) The Commission shall have an official seal which shall be judicially noticed.

(d) The Commission shall at the close of each fiscal year report to the Congress and to the President concerning the action it has taken; the names, salaries, and duties of all individuals in its employ and the moneys it has disbursed; and shall make such further reports on the cause of and means of eliminating discrimination and such recommendations for further legislation as may appear desirable.

(e) The Federal Executive Pay Act of 1956, as amended (5 U.S.C. 2201–2209), is further amended—

(1) by adding to section 105 thereof (5 U.S.C. 2204) the following clause:

"(32) Chairman, Equal Employment Opportunity Commission"; and

(2) by adding to clause (45) of section 106(a) thereof (5 U.S.C. 2205(a)) the following: "Equal Employment Opportunity Commission (4)."

(f) The principal office of the Commission shall be in or near the District of Columbia, but it may meet or exercise any or all its powers at any other place. The Commission may establish such regional or State offices as it deems necessary to accomplish the purpose of this title.

(g) The Commission shall have power—

(1) to cooperate with and, with their consent, utilize regional, State, local, and other agencies, both public and private, and individuals *and to accept voluntary and uncompensated services, notwithstanding the provisions of section 3679(b) of the Revised Statutes (31 U.S.C. 665(b))*;

(2) to pay to witnesses whose depositions are taken or who are summoned before the Commission or any of its agents the same witness and mileage fees as are paid to witnesses in the courts of the United States;

(3) to furnish to persons subject to this title such technical assistance as they may request to further their compliance with this title or an order issued thereunder;

(4) upon the request of (i) any employer, whose employees or some of them, or (ii) any labor organization, whose members or some of them, refuse or threaten to refuse to cooperate in effectuating the provisions of this title, to assist in such effectuation by conciliation or such other remedial action as is provided by this title;

(5) to make such technical studies as are appropriate to effectuate the purposes and policies of this title and to make the results of such studies available to the public;

(6) to refer matters to the Attorney General with recommendations for intervention in a civil action brought by an aggrieved party under section [706] *715*, or for the institution of a civil

action by the Attorney General under section 707, and to advise, consult, and assist the Attorney General on such matters.

(h) Attorneys appointed under this section may, at the direction of the Commission, appear for and represent the Commission in any case in court.

(i) The Commission shall, in any of its educational or promotional activities, cooperate with other departments and agencies in the performance of such educational and promotional activities.

(j) All officers, agents, attorneys, and employees of the Commission shall be subject to the provisions of section 9 of the Act of August 2, 1939, as amended (the Hatch Act), notwithstanding any exemption contained in such section.

[PREVENTION OF UNLAWFUL EMPLOYMENT PRACTICES

[SEC. 706. (a) Whenever it is charged in writing under oath by a person claiming to be aggrieved, or a written charge has been filed by a member of the Commission where he has reasonable cause to believe a violation of this title has occurred (and such charge sets forth the facts upon which it is based) that an employer, employment agency, or labor organization has engaged in an unlawful employment practice, the Commission shall furnish such employer, employment agency, or labor organization (hereinafter referred to as the "respondent") with a copy of such charge and shall make an investigation of such charge, provided that such charge shall not be made public by the Commission. If the Commission shall determine, after such investigation, that there is reasonable cause to believe that the charge is true, the Commission shall endeavor to eliminate any such alleged unlawful employment practice by informal methods of conference, conciliation, and persuasion. Nothing said or done during and as a part of such endeavors may be made public by the Commission without the written consent of the parties, or used as evidence in a subsequent proceeding. Any officer or employee of the Commission, who shall make public in any manner whatever any information in violation of this subsection shall be deemed guilty of a misdeameanor and upon conviction thereof shall be fined not more than $1,000 or imprisened not more than one year.

[(b) In the case of an alleged unlawful employment practice occurring in a State, or political subdivision of a State, which has a State or local law prohibiting the unlawful employment practice alleged and establishing or authorizing a State or local authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, no charge may be filed under subsection (a) by the person aggrieved before the expiration of sixty days after proceedings have been commenced under the State or local law, unless such proceedings have been earlier terminated, provided that such sixty-day period shall be extended to one hundred and twenty days during the first year after the effective date of such State or local law. If any requirement for the commencement of such proceedings is imposed by a State or local author-

ity other than a requirement of the filing of a written and signed statement of the facts upon which the proceeding is based, the proceeding shall be deemed to have been commenced for the purposes of this subsection at the time such statement is sent by registered mail to the appropriate State or local authority.

[(c) In the case of any charge filed by a member of the Commission alleging an unlawful employment practice occurring in a State or political subdivision of a State, which has a State or local law prohibiting the practice alleged and establishing or authorizing a State or local authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, the Commission shall, before taking any action with respect to such charge, notify the appropriate State or local officials and, upon request, afford them a reasonable time, but not less than sixty days (provided that such sixty-day period shall be extended to one hundred and twenty days during the first year after the effective day of such State or local law), unless a shorter period is requested, to act under such State or local law to remedy the practice alleged.

[(d) A charge under subsection (a) shall be filed within ninety days after the alleged unlawful employment practice occurred, except that in the case of an unlawful employment practice with respect to which the person aggrieved has followed the procedure set out in subsection (b), such charge shall be filed by the person aggrieved within two hundred and ten days after the alleged unlawful employment practice occurred, or within thirty days after receiving notice that the State or local agency has terminated the proceedings under the State or local law, whichever is earlier, and a copy of such charge shall be filed by the Commission with the State or local agency.

[(e) If within thirty days after a charge is filed with the Commission or within thirty days after expiration of any period of reference under subsection (c) (except that in either case such period may be extended to not more than sixty days upon a determination by the Commission that further efforts to secure voluntary compliance are warranted), the Commission has been unable to obtain voluntary compliance with this title, the Commission shall so notify the person aggrieved and a civil action may, within thirty days thereafter, be brought against the respondent named in the charge (1) by the person claiming to be aggrieved, or (2) if such charge was filed by a member of the Commission, by any person whom the charge alleges was aggrieved by the alleged unlawful employment practice. Upon application by the complainant and in such circumstances as the court may deem just, the court may appoint an attorney for such complainant and may authorize the commencement of the action without the payment of fees, costs, or security. Upon timely application, the court may, in its discretion, permit the Attorney General to intervene in such civil action if he certifies that the case is of general public importance. Upon request, the court may, in its discretion, stay further proceedings for not more than sixty days pending the termination of State or local proceedings described in subsection (b) or the efforts of the Commission to obtain voluntary compliance.

[(f) Each United States district court and each United States court of a place subject to the jurisdiction of the United States shall

have jurisdiction of actions brought under this title. Such an action may be brought in any judicial district in the State in which the unlawful employment practice is alleged to have been committed, in the judicial district in which the employment records relevant to such practice are maintained and administered, or in the judicial district in which the plaintiff would have worked but for the alleged unlawful employment practice, but if the respondent is not found within any such district, such an action may be brought within the judicial district in which the respondent has his principal office. For purposes of sections 1404 and 1406 of title 28 of the United States Code, the judicial district in which the respondent has his principal office shall in all cases be considered a district in which the action might have been brought.

[(g) If the court finds that the respondent has intentionally engaged in or is intentionally engaging in an unlawful employment practice charged in the complaint, the court may enjoin the respondent from engaging in such unlawful employment practice, and order such affirmative action as may be appropriate, which may include reinstatement or hiring of employees, with or without back pay (payable by the employer, employment agency, or labor organization, as the case may be, responsible for the unlawful employment practice). Interim earnings or amounts earnable with reasonable diligence by the person or persons discriminated against shall operate to reduce the back pay otherwise allowable. No order of the court shall require the admission or reinstatement of an individual as a member of a union or the hiring, reinstatement, or promotion of an individual as an employee, or the payment to him of any back pay, if such individual was refused admission, suspended, or expelled or was refused employment or advancement or was suspended or discharged for any reason other than discrimination on account of race, color, religion, sex or national origin or in violation of section 704(a).

[(h) The provisions of the Act entitled "An Act to amend the Judicial Code and to define and limit the jurisidiction of courts sitting in equity, and for other purposes," approved March 23, 1932 (29 U.S.C. 101–115), shall not apply with respect to civil actions brought under this section.

[(i) In any case in which an employer, employment agency, or labor organization fails to comply with an order of a court issued in a civil action brought under subsection (e), the Commission may commence proceedings to compel compliance with such order.

[(j) Any civil action brought under subsection (e) and any proceedings brought under subsection (i) shall be subject to appeal as provided in sections 1291 and 1292, title 28, United States Code.

[(k) In any action or proceeding under this title the court, in its discretion, may allow the prevailing party, other than the Commission or the United States, a reasonable attorney's fee as part of the costs, and the Commission and the United States shall be liable for costs the same as a private person.]

PREVENTION OF UNLAWFUL EMPLOYMENT PRACTICES

SEC. 706. (a) The Commission is empowered, as hereinafter provided, to prevent any person from engaging in any unlawful employment practice as set forth in section 703 or 704 of this title.

(b) Whenever a charge is filed by or on behalf of a person claiming to be aggrieved, or by a member of the Commission, alleging that an employer, employment agency, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs has engaged in an unlawful employment practice, the Commission shall serve a copy of the charge on such employer, employment agency, labor organization, or joint labor-management committee (hereinafter referred to as the "respondent") and shall make an investigation thereof. Charges shall be in writing and shall contain such information and be in such form as the Commission requires. Charges shall not be made public by the Commission. If the Commission determines after such investigation that there is no reason to believe that the charge is true, it shall dismiss the charge and promptly notify the person claiming to be aggrieved and the respondent of its action. If the Commission determines after such investigation that there is reasonable cause to believe that the charge is true, the Commission shall endeavor to eliminate any such alleged unlawful employment practice by informal methods of conference, conciliation, and persuasion. Nothing said or done during and as a part of such informal endeavors may be made public by the Commission, its officers or employees, or used as evidence in a subsequent proceeding without the written consent of the persons concerned. Any person who makes public information in violation of this subsection shall be fined not more than $1,000 or imprisoned not more than one year, or both. The Commission shall make its determination on reasonable cause as promptly as possible and, so far as practicable, not later than one hundred and twenty days from the filing of the charge or, where applicable under subsection (c) or (d), from the date upon which the Commission is authorized to take action with respect to the charge.

(c) In the case of a charge filed by or on behalf of a person claiming to be aggrieved alleging an unlawful employment practice occurring in a State, or political subdivision of a State, which has a State or local law prohibiting the unlawful employment practice alleged and establishing or authorizing a State or local authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, the Commission shall take no action with respect to the investigation of such charge before the expiration of sixty days after proceedings have been commenced under the State or local law: Provided, That such sixty-day period shall be extended to one hundred and twenty days during the first year after the effective date of such State or local law. If any requirement for the commencement of such proceedings is imposed by a State or local authority other than a requirement of the filing of a written and signed statement of the facts upon which the proceeding is based, the proceeding shall be deemed to have been commenced for the purposes of this subsection at the time such statement is sent by certified mail to the appropriate State or local authority.

(d) In the case of any charge filed by a member of the Commission alleging an unlawful employment practice occurring in a State or political subdivision of a State which has a State or local law prohibiting the practice alleged and establishing or authorizing a State or local authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice therof the Commission shall, before taking any action with respect to such charge, notify the appropriate State or local officials and, upon request, afford them a

reasonable time, but not less than sixty days: Provided, That such sixty-day period shall be extended to one hundred and twenty days during the first year after the effective date of such State or local law, unless a shorter period is requested, to act under such State or local law to remedy the practice alleged.

(e) A charge shall be filed within one hundred eighty days after the alleged unlawful employment practice occurred and a copy shall be served upon the person against whom such charge is made as soon as practicable thereafter, except that in a case of an unlawful employment practice with respect to which the person aggrieved has initially instituted proceedings with a State or local agency with authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, such charge shall be filed by the person aggrieved within three hundred days after the alleged unlawful employment practice occurred, or within thirty days after receiving notice that the State or local agency has terminated the proceedings under the State or local law, whichever is earlier, and a copy of such charge shall be filed by the Commission with the State or local agency.

(f) If the Commission determines after attempting to secure voluntary compliance under subsection (b) that it is unable to secure from the respondent a conciliation agreement acceptable to the Commission and to the person aggrieved, which determination shall not be reviewable in any court, the Commission shall issue and cause to be served upon the respondent a complaint stating the facts upon which the allegation of the unlawful employment practice is based, together with a notice of hearing before the Commission, or a member or agent thereof, at a place therein fixed not less than five days after the serving of such complaint. Related proceedings may be consolidated for hearing. Any member of the Commission who filed a charge in any case shall not participate in a hearing on any complaint arising out of such charge, except as a witness.

(g) A respondent shall have the right to file an answer to the complaint against him and with the leave of the Commission, which shall be granted whenever it is reasonable and fair to do so, may amend his answer at any time. Respondents and the person aggrieved shall be parties and may appear at any stage of the proceedings, with or without counsel. The Commission may grant such other persons a right to intervene or to file briefs or make oral arguments as amicus curiae or for other purposes, as it considers appropriate. All testimony shall be taken under oath and shall be reduced to writing.

(h) If the Commission finds that the respondent has engaged in an unlawful employment practice, the Commission shall state its findings of fact and shall issue and cause to be served on the respondent and the person or persons aggrieved by such unlawful employment practice an order requiring the respondent to cease and desist from such unlawful employment practice and to take such affirmative action, including reinstatement or hiring of employees, with or without backpay (payable by the employer, employment agency, or labor organization, as the case may be, responsible for the unlawful employment practice), as will effectuate the policies of this title: Provided, That interim earnings or amounts earnable with reasonable diligence by the aggrieved person or persons shall operate to reduce the backpay otherwise allowable. Such order may further require such respondent to make reports from time to time showing the extent to which he has complied with the order. If the Commission finds that the respondent has not engaged in any unlawful employment practice, the

Commission shall state its findings of fact and shall issue and cause to be served on the respondent and the person or persons alleged in the complaint to be aggrieved an order dismissing the complaint.

(i) After a charge has been filed and until the record has been filed in court as hereinafter provided, the proceeding may at any time be ended by agreement between the Commission and the parties for the elimination of the alleged unlawful employment practice, approved by the Commission, and the Commission may at any time, upon reasonable notice, modify or set aside, in whole or in part, any finding or order made or issued by it. An agreement approved by the Commission shall be enforceable under subsection (k) and the provisions of that subsection shall be applicable to the extent appropriate to a proceeding to enforce an agreement.

(j) Findings of fact and orders made or issued under subsection (h) or (i) of this section shall be determined on the record.

(k) The Commission may petition any United States court of appeals within any circuit wherein the unlawful employment practice in question occurred or wherein the respondent resides or transacts business for the enforcement of its order and for appropriate temporary relief or restraining order, and shall file in the court the record in the proceedings as provided in section 2112 of title 28, United States Code. Upon such filing, the court shall cause notice thereof to be served upon the parties to the proceeding before the Commission, and thereupon shall have jurisdiction of the proceeding and of the question determined therein and shall have power to grant such temporary relief, restraining order, or other order as it deems just and proper, and to make and enter a decree enforcing, modifying and enforcing as so modified, or setting aside in whole or in part the order of the Commission. No objection that has not been urged before the Commission, its member, or agent, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Commission with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive. If any party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Commission, its member, or its agent, the court may order such additional evidence to be taken before the Commission, its member, or its agent, and to be made a part of the record. The Commission may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which findings with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive, and its recommendations, if any, for the modification or setting aside of its original order. Upon the filing of the record with it the jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the Supreme Court of the United States as provided in section 1254 of title 28, United States Code. Petitions filed under this subsection shall be heard expeditiously.

(l) Any party aggrieved by a final order of the Commission granting or denying, in whole or in part, the relief sought may obtain a review of such order in any United States court of appeals in the circuit in which the unlawful employment practice in question is alleged to have occurred or in which such party resides or transacts business, or in the United States

Court of Appeals for the District of Columbia, by filing in such court a written petition praying that the order of the Commission be modified or set aside. A copy of such petition shall be forthwith transmitted by the clerk of the Court to the Commission (and to the other parties to the proceeding before the Commission) and thereupon the Commission shall file in the court the certified record in the proceeding as provided in section 2112 of title 28, United States Code. Upon the filing of such petition, the court shall proceed in the same manner as in the case of an application by the Commission under subsection (k), the findings of the Commission with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive, and the court shall have the same jurisdiction to grant such temporary relief or restraining order as it deems just and proper, and in like manner to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Commission. The commencement of proceedings under this subsection or subsection (k) shall not, unless ordered by the court, operate as a stay of the order of the Commission.

(m) The provisions of the Act entitled "An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes", approved March 23, 1932 (47 Stat. 70 et seq.; 29 U.S.C. 101–115), shall not apply with respect to (1) proceedings under subsection (k), (l), or (o) of this section, (2) proceedings under section 707 of this title, or (3) proceedings under section 715 of this title.

(n) The Attorney General shall conduct all litigation to which the Commission is a party in the Supreme Court of the United States pursuant to this title. All other litigation affecting the Commission, or to which it is a party, shall be conducted by the general counsel of the Commission.

(o) Whenever a charge is filed with the Commission pursuant to subsection (b) and the Commission concludes on the basis of a preliminary investigation that prompt judicial action is necessary to preserve the power of the Commission to grant effective relief in the proceeding the Commission may, bring an action for appropriate temporary or preliminary relief pending its final disposition of such charge, in the United States district court for any judicial district in the State in which the unlawful employment practice concerned is alleged to have been committed, or the judicial district in which the aggrieved person would have been employed but for the alleged unlawful employment practice, but, if the respondent is not found within any such judicial district, such an action may be brought in the judicial district in which the respondent has his principal office. For purposes of sections 1404 and 1406 of title 28, United States Code, the judicial district in which the respondent has his principal office shall in all cases be considered a judicial district in which such an action might have been brought. Upon the bringing of any such action, the district court shall have jurisdiction to grant such injunctive relief or temporary restraining order as it deems just and proper, notwithstanding any other provision of law. Rule 65 of the Federal Rules of Civil Procedure, except paragraph (a)(2) thereof, shall govern proceedings under this subsection.

SEC. 707. (a) Whenever the Attorney General has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights secured by this title, and that the pattern or practice is of such a nature and is intended to deny the full exercise of the rights herein described, the Attorney General may bring a civil action in the appropriate

district court of the United States by filing with it a complaint (1) signed by him (or in his absence the Acting Attorney General), (2) setting forth facts pertaining to such pattern or practice, and (3) requesting such relief, including an application for a permanent or temporary injunction, restraining order or other order against the person or persons responsible for such pattern or practice, as he deems necessary to insure the full enjoyment of the rights herein described.

(b) The district courts of the United States shall have and shall exercise jurisdiction of proceedings instituted pursuant to this section, and in any such proceeding the Attorney General may file with the clerk of such court a request that a court of three judges be convened to hear and determine the case. Such request by the Attorney General shall be accompanied by a certificate that, in his opinion, the case is of general public importance. A copy of the certificate and request for a three-judge court shall be immediately furnished by such clerk to the chief judge of the circuit (or in his absence, the presiding circuit judge of the circuit) in which the case is pending. Upon receipt of such request it shall be the duty of the chief judge of the circuit or the presiding circuit judge, as the case may be, to designate immediately three judges in such circuit, of whom at least one shall be a circuit judge and another of whom shall be a district judge of the court in which the proceeding was instituted, to hear and determine such case, and it shall be the duty of the judges so designated to assign the case for hearing at the earliest practicable date, to participate in the hearing and determination thereof, and to cause the case to be in every way expedited. An appeal from the final judgment of such court will lie to the Supreme Court.

In the event the Attorney General fails to file such a request in any such proceeding, it shall be the duty of the chief judge of the district (or in his absence, the acting chief judge) in which the case is pending immediately to designate a judge in such district to hear and determine the case. In the event that no judge in the district is available to hear and determine the case, the chief judge of the district, or the acting chief judge, as the case may be, shall certify this fact to the chief judge of the circuit (or in his absence, the acting chief judge) who shall then designate a district or circuit judge of the circuit to hear and determine the case.

It shall be the duty of the judge designated pursuant to this section to assign the case for hearing at the earliest practicable date and to cause the case to be in every way expedited.

(c) Any record or paper required by section 709(c) of this title to be preserved or maintained shall be made available for inspection, reproduction, and copying by the Commission, the Attorney General, or his representative, upon demand in writing directed to the person having custody, possession, or control of such record or paper. Unless otherwise ordered by a court of the United States, neither the Commission, the Attorney General, nor his representative shall disclose any record or paper produced pursuant to this title, or any reproduction or copy, except to Congress or any committee thereof, or to a governmental agency, or in the presentation of any case or proceeding before any court or grand jury. The United States district court for the district in which a demand is made or in which a record or paper so demanded is located, shall have jurisdiction to compel by appropriate process the production of such record or paper.

EFFECT ON STATE LAWS

SEC. 708. Nothing in this title shall be deemed to exempt or relieve any person from any liability, duty, penalty, or punishment provided by any present or future law of any State or political subdivision of a State, other than any such law which purports to require or permit the doing of any act which would be an unlawful employment practice under this title.

INVESTIGATIONS, INSPECTIONS, RECORDS, STATE AGENCIES

SEC. 709. (a) In connection with any investigation of a charge filed under section 706, the Commission or its designated representative shall at all reasonable times have access to, for the purposes of examination, and the right to copy any evidence of any person being investigated or proceeded against that relates to unlawful employment practices covered by this title and is relevant to the charge under investigation.

(b) The Commission may cooperate with State and local agencies charged with the administration of State fair employment practices laws and, with the consent of such agencies, may, for the purpose of carrying out its functions and duties under this title and within the limitation of funds appropriated specifically for such purpose, *engage in and contribute to the cost of research and other projects of mutual interest undertaken by such agencies, and* utilize the services of such agencies and their employees and, notwithstanding any other provision of law, may [reimburse] *pay by advance or reimbursement* such agencies and their employees for services rendered to assist the Commission in carrying out this title. In furtherance of such cooperative efforts, the Commission may enter into written agreements with such State or local agencies and such agreements may include provisions under which the Commission shall refrain from processing a charge in any cases or class of cases specified in such agreements [and under which no person may bring a civil action under section 706 in any cases or class of cases so specified,] or under which the Commission shall relieve any person or class of persons in such State or locality from requirements imposed under this section. The Commission shall rescind any such agreement whenever it determines that the agreement no longer serves the interest of effective enforcement of this title.

[(c) Except as provided in subsection (d), every employer, employment agency, and labor organization subject to this title shall (1) make and keep such records relevant to the determinations of whether unlawful employment practices have been or are being committed, (2) preserve such records for such periods, and (3) make such reports therefrom, as the Commission shall prescribe by regulation or order, after public hearing, as reasonable, necessary, or appropriate for the enforcement of this title or the regulations or orders thereunder. The Commission shall, by regulation, require each employer, labor organization, and joint labor-management committee subject to this title which controls an apprenticeship or other training program to maintain such records as are reasonably necessary to carry out the purpose of this title, including, but not limited to, a list of applicants who wish to participate in such program, including the chronological order in which such applications were received, and shall furnish to

the Commission, upon request, a detailed description of the manner in which persons are selected to participate in the apprenticeship or other training program. Any employer, employment agency, labor organization, or joint labor-management committee which believes that the application to it of any regulation or order issued under this section would result in undue hardship may (1) apply to the Commission for an exemption from the application of such regulation or order, or (2) bring a civil action in the United States district court for the district where such records are kept. If the Commission or the court, as the case may be, finds that the application of the regulation or order to the employer, employment agency, or labor organization in question would impose an undue hardship, the Commission or the court, as the case may be, may grant appropriate relief.]

(c) *Every employer, employment agency, and labor organization subject to this title shall (1) make and keep such records relevant to the determinations of whether unlawful employment practices have been or are being committed, (2) preserve such records for such periods, and (3) make such reports therefrom as the Commission shall prescribe by regulation or order, after public hearing, as reasonable, necessary, or appropriate for the enforcement of this title or the regulation or orders thereunder. The Commission shall, by regulation, require each employer, labor organization, and joint labor-management committee subject to this title which controls an apprenticeship or other training program to maintain such records as are reasonably necessary to carry out the purpose of this title, including, but not limited to, a list of applicants who wish to participate in such program, including the chronological order in which such applicants were received, and to furnish to the Commission upon request, a detailed description of the manner in which persons are selected to participate in the apprenticeship or other training program. Any employer, employment agency, labor organization, or joint labor-management committee which believes that the application to it of any regulation or order issued under this section would result in undue hardship may apply to the Commission for an exemption from the application of such regulation or order, and, if such application for an exemption is denied, bring a civil action in the United States district court for the district where such records are kept. If the Commission or the court, as the case may be, finds that the application of the regulation or order to the employer, employment agency, or labor organization in question would impose an undue hardship, the Commission or the court, as the case may be, may grant appropriate relief. If any person required to comply with the provisions of this subsection fails or refuses to do so, the United States district court for the district in which such person is found, resides or transacts business, shall, upon application of the Commission, have jurisdiction to issue to such person an order requiring him to comply.*

[(d) The provisions of subsection (c) shall not apply to any employer, employment agency, labor organization, or joint labor-management committee with respect to matters occurring in any State or political subdivision thereof which has a fair employment practice law during any period in which such employer, employment agency, labor organization, or joint labor-management committee is subject to such law, except that the Commission may require such notations on records which such employer, employment agency, labor organization, or joint labor-management committee keeps or is required to keep as are necessary because of differences in coverage

or methods of enforcement between the State or local law and the provisions of this title. Where an employer is required by Executive Order 10925, issued March 6, 1961, or by any other Executive order prescribing fair employment practices for Government contractors and subcontractors, or by rules or regulations issued thereunder, to file reports relating to his employment practices with any Federal agency or committee, and he is substantially in compliance with such requirements, the Commission shall not require him to file additional reports pursuant to subsection (c) of this section.]

(d) In prescribing requirements pursuant to subsection (c) of this section, the Commission shall consult with other interested State and Federal agencies and shall endeavor to coordinate its requirements with those adopted by such agencies. The Commission shall furnish, upon request and without cost to any State or local agency charged with the administration of a fair employment practice law, information obtained pursuant to subsection (c) of this section from any employer, employment agency, labor organization, or joint labor-management committee subject to the jurisdiction of such agency. Such information shall be furnished on condition that it not be made public by the recipient agency prior to the institu ion of a proceeding under State or local law involving such information. If this condition is violated by a recipient agency, the Commission may decline to honor subsequent requests pursuant to this subsection.

(e) It shall be unlawful for any officer or employee of the Commission to make public in any manner whatever any information obtained by the Commission pursuant to its authority under this section prior to the institution of any proceeding under this title involving such information. Any officer or employee of the Commission who shall make public in any manner whatever any information in violation of this subsection shall be guilty of a misdemeanor and upon conviction thereof, shall be fined not more than $1,000, or imprisoned not more than one year.

[INVESTIGATORY POWERS

[SEC. 710. (a) For the purposes of any investigation of a charge filed under the authority contained in section 706, the Commission shall have authority to examine witnesses under oath and to require the production of documentary evidence relevant or material to the charge under investigation.

[(b) If the respondent named in a charge filed under section 706 fails or refuses to comply with a demand of the Commission for permission to examine or to copy evidence in conformity with the provisions of section 709(a), or if any person required to comply with the provisions of section 709 (c) or (d) fails or refuses to do so, or if any person fails or refuses to comply with a demand by the Commission to give testimony under oath, the United States district court for the district in which such person is found, resides, or transacts business, shall, upon application of the Commission, have jurisdiction to issue to such person an order requiring him to comply with the provisions of section 709 (c) or (d) or to comply with the demand of the Commission, but the attendance of a witness may not be required outside the State where he is found, resides, or transacts business and the production of evidence may not be required outside the State where such evidence is kept.

[(c) Within twenty days after the service upon any person charged under section 706 of a demand by the Commission for the production of documentary evidence or for permission to examine or to copy evidence in conformity with the provisions of section 709(a), such person may file in the district court of the United States for the judicial district in which he resides, is found, or transacts business, and serve upon the Commission a petititon for an order of such court modifying or setting aside such demand. The time allowed for compliance with the demand in whole or in part as deemed proper and ordered by the court shall not run during the pendency of such petition in the court. Such petition shall specify each ground upon which the petitioner relies in seeking such relief, and may be based upon any failure of such demand to comply with the provisions of this title or with the limitations generally applicable to compulsory process or upon any constitutional or other legal right or privilege of such person. No objection which is not raised by such a petition may be urged in the defense to proceeding initiated by the Commission under subsection (b) for enforcement of such a demand unless such proceeding is commenced by the Commission prior to the expiration of the twenty-day period, or unless the court determines that the defendant could not reasonably have been aware of the availability of such ground of objection.

[(d) In any proceeding brought by the Commission under subsection (b), except as provided in subsection (c) of this section, the defendant may petition the court for an order modifying or setting aside the demand of the Commission.]

INVESTIGATORY POWERS

SEC. 710. For the purpose of all hearings and investigations conducted by the Commission or its duly authorized agents or agencies, section 11 of the National Labor Relations Act (49 Stat. 455; 29 U.S.C. 161) shall apply: Provided, That no subpena shall be issued on the application of any party to proceedings before the Commission until after the Commission has issued and caused to be served upon the respondent a complaint and notice of hearing under subsection (f) of section 706.

NOTICES TO BE POSTED

SEC. 711. (a) Every employer, employment agency, and labor organization, as the case may be, shall post and keep posted in conspicuous places upon its premises where notices to employees, applicants for employment, and members are customarily posted a notice to be prepared or approved by the Commission setting forth excerpts from or, summaries of, the pertinent provisions of this title and information pertinent to the filing of a complaint.

(b) A willful violation of this section shall be punishable by a fine of not more than $100 for each separate offense.

VETERANS' PREFERENCE

SEC. 712. Nothing contained in this title shall be construed to repeal or modify any Federal, State, territorial, or local law creating special rights or preference for veterans.

RULES AND REGULATIONS

SEC. 713. (a) The Commission shall have authority from time to time to issue, amend, or rescind suitable procedural regulations to carry out the provisions of this title. Regulations issued under this section shall be in conformity with the standards and limitations of the Administrative Procedure Act.

(b) In any action or proceeding based on any alleged unlawful employment practice, no person shall be subject to any liability or punishment for or on account of (1) the commission by such person of an unlawful employment practice if he pleads and proves that the act or omission complained of was in good faith, in conformity with, and in reliance on any written interpretation or opinion of the Commission, or (2) the failure of such person to publish and file any information required by any provision of this title if he pleads and proves that he failed to publish and file such information in good faith, in conformity with the instructions of the Commission issued under this title regarding the filing of such information. Such a defense, if established, shall be a bar to the action or proceeding, notwithstanding that (A) after such act or omission, such interpretation or opinion is modified or rescinded or is determined by judicial authority to be invalid or of no legal effect, or (B) after publishing or filing the description and annual reports, such publication or filing is determined by judicial authority not to be in conformity with the requirements of this title.

(c) Except for the powers granted to the Commission under subsection (h) of section 706, the power to modify or set aside its findings, or make new findings, under subsections (i) and (k) of section 706, the rulemaking power as defined in subchapter II of chapter 5 of title 5, United States Code, with reference to general rules as distinguished from rules of specific applicability, and the power to enter into or rescind agreements with State and local agencies, as provided in subsection (b) of section 709, under which the Commission agrees to refrain from processing a charge in any cases or class of cases or under which the Commission agrees to relieve any person or class of persons in such State or locality from requirements imposed by section 709, the Commission may delegate any of its functions, duties, and powers to such person or persons as the Commission may designate by regulation, including functions, duties, and powers with respect to investigating, conciliating, hearing, determining, ordering, certifying, reporting or otherwise acting as to any work, business, or matter: Provided, That nothing in this subsection authorizes the Commission to provide for persons other than those referred to in clauses (2) and (3) of subsection (b) of section 556 of title 5 of the United States Code to conduct any hearing to which that section applies.

(d) The Commission is authorized to delegate to any group of three or more members of the Commission any or all of the powers which it may itself exercise.

FORCIBLY RESISTING THE COMMISSION OR ITS REPRESENTATIVES

SEC. 714. The provisions of [section 111] *sections 111 and 1114*, title 18, United States Code, shall apply to officers, agents, and employees of the Commission in the performance of their official duties.

[SPECIAL STUDY BY SECRETARY OF LABOR

[SEC. 715. The Secretary of Labor shall make a full and complete study of the factors which might tend to result in discrimination in employment because of age and of the consequences of such discrimination on the economy and individuals affected. The Secretary of Labor shall make a report to the Congress not later than June 30, 1965, containing the results of such study and shall include in such report such recommendations for legislation to prevent arbitrary discrimination in employment because of age as he determines advisable.]

CIVIL ACTIONS BY PERSONS AGGRIEVED

SEC. 715. (a) If (1) the Commission determines that there is no reasonable cause to believe the charge is true and dismisses the charge in accordance with section 706(b), (2) finds no probable jurisdiction and dismisses the charge, or (3) within one hundred and eighty days after a charge is filed with the Commission, or within one hundred and eighty days after expiration of any period of reference under section 706 (c) or (d), the Commission has not either (i) issued a complaint in accordance with section 706(f), (ii) determined that there is not reasonable cause to believe the charge is true and dismissed the charge in accordance with section 706(b) or found no probable jurisdiction and dismissed the charge, or (iii) entered into a conciliation agrecment acceptable to the Commission and to the person aggricved in accordance with section 706(f) or an agreement with the parties in accordance with section 706(i), the Commission shall so notify the person aggrieved and within sixty days after the giving of such notice a civil action may be brought against the respondent named in the charge (1) by the person claiming to be aggrieved, or (2) if such charge was filed by a member of the Commission, by any person whom the charge alleges was aggrieved by the alleged unlawful employment practice. Upon application by the complainant and in such circumstances as the court may deem just, the court may appoint an attorney for such complainant and may authorizc the commencement of the action without the payment of fees, costs, or security. Upon timely application, the court may, in its discretion, permit the Commission to intcrvene in such civil action if it certifies that the case is of general public importance. Upon the commencement of such civil action, the Commission shall be divested of jurisdiction over the proceeding and shall take no further action with respect thereto: Provided, That, upon request, the court may, in its discretion, stay further proceedings for not more than sixty days pending termination of State or local proceedings described in subsection (c) or (d) or the efforts of the Commission to obtain voluntary compliance.

(b) Each United States district court and each United States court of a place subject to the jurisdiction of the United States shall have jurisdiction of actions brought under this section. Such an action may be brought in any judicial district in the State in which the unlawful employment practice is alleged to have becn committed, or in the judicial district in which the plaintiff would have been employed but for the alleged unlawful employment practice, bu if the respondent is not found within any such district, such an action may be brought within the judicial district in which the respondent has his principal office. For purposes of sections 1404 and 1406 of title 28 of the United States Code, the judicial district in which the

respondent has his principal office shall in all cases be considered a district in which the action might have been brought. Upon the bringing of any such action, the district court shall have jurisdiction to grant such temporary or preliminary relief as it deems just and proper.

(c) If the court finds that the respondent has intentionally engaged in or is intentionally engaging in an unlawful employment practice charged in the complaint, the court may enjoin the respondent from engaging in such unlawful employment practice, and order such affirmative action as may be appropriate, which may include reinstatement or hiring of employees, with or without backpay (payable by the employer, employment agency, or labor organization, as the case may be, responsible for the unlawful employment practice). Interim earnings or amounts earnable with reasonable diligence by the person or persons discriminated against shall operate to reduce the backpay otherwise allowable. No order of the court shall require the admission or reinstatement of an individual as a member of a union or the hiring, reinstatement, or promotion of an individual as an employee, or the payment to him of any backpay, if such individual was refused admission, suspended, or expelled or was refused employment or advancement or was suspended or discharged for any reason other than discrimination on account of race, color, religion, sex, or national origin or in violation of section 704(a).

(d) In any case in which an employer, employment agency, or labor organization fails to comply with an order of a court issued in a civil action brought under subsection (a), the Commission may commence proceedings to compel compliance with such order.

(e) Any civil action brought under subsection (a) and any proceedings brought under subsection (d) shall be subject to appeal as provided in sections 1291 and 1292, title 28, United States Code.

(f) In any action or proceeding under this section, the court, in its discretion, may allow the prevailing plaintiff a reasonable attorney's fee as part of the costs.

EFFECTIVE DATE

SEC. 716. (a) This title shall become effective one year after the date of its enactment.

(b) Notwithstanding subsection (a), sections of this title other than sections 703, 704, 706, and 707 shall become effective immediately.

(c) The President shall, as soon as feasible after the enactment of this title, convene one or more conferences for the purpose of enabling the leaders of groups whose members will be affected by this title to become familiar with the rights afforded and obligations imposed by its provisions, and for the purpose of making plans which will result in the fair and effective administration of this title when all of its provisions become effective. The President shall invite the participation in such conference or conferences of (1) the members of the President's Committee on Equal Employment Opportunity, (2) the members of the Commission on Civil Rights, (3) representatives of State and local agencies engaged in furthering equal employment opportunity, (4) representatives of private agencies engaged in furthering equal employment opportunity, and (5) representatives of employers, labor organizations, and employment agencies who will be subject to this title.

NONDISCRIMINATION IN FEDERAL GOVERNMENT EMPLOYMENT

SEC. 717.[1] *(a) All personnel actions affecting employees or applicants for employment in the competitive service (as defined in section 2102 of title 5 of the United States Code) or employees or applicants for employment in positions with the District of Columbia government covered by the Civil Service Retirement Act shall be made free from any discrimination based on race, color, religion, sex, or national origin.*

(b) The Equal Employment Opportunity Commission shall have authority to enforce the provision of subsection (a) and shall issue such rules, regulations, orders, and instructions as it deems necessary and appropriate to carry out its responsibilities hereunder, and the head of each executive department and agency and the appropriate officers of the District of Columbia shall comply with such rules, regulations, orders, and instructions: Provided, That such rules and regulations shall provide that an employee or applicant for employment shall be notified of any final action taken on any complaint filed by him thereunder.

(c) Within thirty days of receipt of notice given under subsection (b), the employee or applicant for employment, if aggrieved by the final disposition of his complaint, may file a civil action as provided in section 715, in which civil action the head of the executive department or agency, or the District of Columbia, as appropriate, shall be the respondent.

(d) The provisions of section 715 shall govern civil actions brought hereunder.

(e) All functions of the Civil Service Commission which the Director of the Bureau of the Budget determines relate to nondiscrimination in government employment are transferred to the Equal Employment Opportunity Commission.

EFFECT UPON OTHER LAW

SEC. 718. Nothing contained in this Act shall relieve any government agency or official of its or his primary responsibility to assure nondiscrimination in employment as required by the Constitution, statutes, and Executive orders.

TITLE 5, UNITED STATES CODE

§ 5314. Positions at level III.

Level III of the Executive Schedule applies to the following positions, for which the annual rate of basic pay is $40,000:

* * * * * * *

(55) Chairman, Equal Employment Opportunity Commission.

§ 5315. Positions at level IV.

Level IV of the Executive Schedule applies to the following positions, for which the annual rate of basic pay is $38,000:

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(72) [Chairman] *Members,* Equal Employment Opportunity Commission (*4*).

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[1] Effective six months after date of enactment.

§ 5316. Positions at level V.

Level V of the Executive Schedule applies to the following positions, for which the annual rate of basic pay is $36,000:

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[(111) Members, Equal Employment Opportunity Commission (4).]

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MINORITY VIEWS ON H.R. 17555

We oppose enactment of the committee bill, H.R. 17555, and urge instead the enactment of the administration's bill, H.R. 13517.

Let it be said at the outset, that both bills are in complete agreement on the fundamental goal which both proposals seek, to wit, the necessity for conferring on the Equal Employment Opportunity Commission (herein called the EEOC) the authority which it now lacks, to secure effective enforcement of the provisions of title VII of the Civil Rights Act of 1964. Title VII prohibits discrimination in the various aspects of the employment relationship and the activities and functions related thereto, because of race, color, religion, sex, or national origin, and the Commission is the agency established by law to give effect to this statutory policy.

I. THE ISSUES

The significant issue which separates the proponents of the two measures is—What shall be the structure of the EEOC, and what procedures shall it use in order to insure the most effective enforcement of the substantive provisions of title VII? The committee bill, H.R. 17555, transforms the EEOC, which presently possesses no enforcement authority, into a quasi-judicial administrative agency substantially similar to the National Labor Relations Board (NLRB) and like it empowered to hold formal hearings and to issue cease-and-desist and other appropriate remedial orders. The administration bill, H.R. 13517, retains the present structure and functions of the EEOC but gives it the authority to bring a civil action in the Federal district courts against the party alleged to have violated the prohibitions against discriminatory conduct as set forth in the statute.

The only serious question before the committee therefore, was which of these two approaches is best designed to achieve the objectives of title VII of the Civil Rights Act of 1964. In committee, the administration bill was offered as a substitute and was rejected by the committee which thereafter ordered the committee bill, now before us, reported favorably. It is our intention on the floor again to offer the administration bill H.R. 13517 as a substitute for the committee bill, H.R. 17555.

II. SUPERIORITY OF THE ADMINISTRATION BILL, H.R. 13517

The history of fair employment practices legislation has generally been characterized by the assumption that administrative procedures, such as those provided in the committee bill, are the only answer to the problem of occupational discrimination. It is our contention that this assumption, however justified it may have been in the past, certainly no longer holds true in the present, and that the direct judicial approach offers greater advantages for legislation of the type now before us.

Both approaches envisage an adversary hearing before a finder of fact. Under the administrative cease-and-desist approach, the finder of fact would be a hearing officer, while under the district court approach, the finder of fact would be the Federal district court judge. In neither case would there be a jury trial. We support the latter for the following reasons:

A. Greater prestige of Federal judges as compared with hearings officers

We believe that the appropriate forum to resolve civil rights questions—questions of employment discrimination as well as such matters as public accommodations, school desegregation, fair housing, voting rights—is a court. Civil rights issues frequently arouse strong emotion. U.S. district court proceedings provide procedural safeguards to all concerned; Federal judges are well known in their areas and enjoy great respect; the forum is convenient for the litigants and is impartial; the proceedings are public, and the judge has power to fashion a complete remedy and resolution of the problem.

Hearings officers do not enjoy similar status and esteem, both because they lack the judicial office, and generally are strangers to the community in which they conduct their hearings. In any event, we have observed over the years that administrative hearings tend to become as formal and circumscribed as judicial hearings but without the prestige advantages which characterize the functioning of a court. Thus, to take one example, the NLRB, which serves as a model for the committee bill, has published rules and regulations governing their hearings which rival in complexity the Rules of Civil Procedure which govern proceedings in the Federal district courts.

B. Collecting the evidence

The district court approach has a great advantage over a hearing procedure in securing the needed evidence. The Federal Rules of Civil Procedure, with respect to discovery, would greatly facilitate the collection of evidence for trial. Under a cease-and-desist approach, the rather cumbersome method of enforcing subpenas severely inhibits the acquisition of evidence for trial, making the hearing very dependent upon the investigation. Experience has shown that investigations which are aimed simply at developing enough evidence to find reasonable cause fall short of providing adequate evidence for obtaining a decision where the standard is a preponderance of evidence on the record. Discovery procedures take less time than administrative fact-gathering techniques, and the contempt powers of the court operate to inhibit any intimidation of witnesses, which is a rather difficult problem that is often real, but seldom apparent.

C. Relief and remedy—Quick or delayed?

When we come to the area of relief, the district court approach is clearly preferable to the cease-and-desist method. The pertinent yardstick is the amount of time an aggrieved person must wait before he is afforded relief, whether temporary or permanent. This point is central to the discussion, for in cases of employment discrimination relief too long delayed is often relief denied.

Empowering EEOC to bring court suits will greatly facilitate its ability to implement the law without delay and to bring effective

relief to victims of discrimination. In the first place, it would take a considerable period of time to secure the necessary remedy.

Under the district court approach, if one prevails before the court, he is entitled to an immediate injunction and other relief to bring about a rapid end to the discriminatory practices proved at the trial. A relatively simple proof would allow the EEOC to obtain a preliminary injunction pending a full trial of the case. In other words, where discrimination is established, relief is available to the charging parties as soon as the proof is completed and, in many instances, even before the case is fully tried.

As a matter of practice, this would *not* be the case under the cease-and-desist approach. While we recognize that most administrative agencies' statutes contain provision for preliminary judicial relief prior to administrative hearing, it does not necessarily follow that the problem is thereby resolved. The Labor Board has such authority under its statute, but we do not think it is any secret that the Board has *used* the power so infrequently as practically to negate its existence. This is largely because seeking preliminary relief on anything approaching a regular basis would require the full-time efforts of a very large number of lawyers. The issues in every case would have to be litigated in three different forums, including the court of appeals, before a *final, enforceable* decree would issue.

The system would be just too cumbersome to work on a regular basis, and is a rather high price to pay merely to enjoy a special standard of review in courts of appeal that have historically demonstrated both sympathy and sophistication in title VII litigation. One must keep in mind that the great growth of administrative agencies as adjudicating bodies took place in the 1930's because of the alleged hostility and lack of understanding of the problems of that time by the courts of that time. Today, in the area of civil rights at least, the opposite has been true. Whereas administrative and other nonjudicial approaches to the problems of employment discrimination have evidenced timidity and a lack of resourcefulness on the part of the administrative agencies, the courts have from the beginning demonstrated both that they knew the nature of the problem and were willing to take the steps necessary to effectively combat employment discrimination.

With this in mind, it seems eminently more sensible to us to proceed in a forum where not only can preliminary relief be made available at the outset, but, if circumstances warrant, further relief can be obtained as the case proceeds, with *permanent relief* embodied in a self-enforcing decree issuing at the culmination of trial. Thus we will have avoided the multiplicity of opportunities for delay that are inherent in the cease-and-desist approach, and aggrieved parties will have their remedy at the earliest possible moment.

This alternative saves the best features of the independent agency approach—expertise and political autonomy—while avoiding the problems that arise when an active enforcement stance must be accommodated within a structure that contemplates quasi-judicial neutrality. The problem title VII seeks to correct is not one susceptible to the kind of policy balancing that is usual in the administration of laws regulating utilities or other situations involving competing interests. Racial discrimination does not occupy the status of an "interest" under our system of law. It is a grave injustice which should be eliminated

in as quick and efficient a manner as possible. We think that the administration bill, H.R. 13517, will well serve that end, and we have the assurance of the President of the United States that he strongly supports its speedy passage, free of amendments designed to cripple its provisions.

D. The administration bill would not impose an unmanageable burden on the Federal district courts

We do not believe that H.R. 13517 would flood the courts with litigation. Not all the pending charges before EEOC and the charges that were not successfully conciliated will go to court. To the contrary, if a respondent knows that his failure to conciliate may subject him to court suit, the result is likely to be a substantial reduction of the number of recalcitrant respondents. The addition of new enforcement powers should reduce the likelihood of litigation in most cases; as a general rule, people do not want to be taken to court when they can settle out of court.

One must also appreciate the nature of these cases. They take time to investigate and prepare for court action. EEOC lawyers will have to be selective, at least at first, and they will want to take representative cases to court as a means of insuring widespread compliance.

While it is certain that there will be more title VII cases in court initially, we do not believe that the administration's proposal will place any significant strain on the 93 Federal district courts. Once the legal obligations become clear, conciliations and settlements without trial will become more feasible. We are confident that the district courts can absorb these cases without undue burden or delay.

III. CONCLUSION

The committee bill would make several other changes in the present provisions of title VII. We reiterate, however, that enforcement power is at the heart of what we are discussing, and deserves the greatest amount of attention. Realistic legislation in this area is overdue, and is essential if we are ever to witness the final elimination of irrelevant discrimination in situations which affect employment. We are convinced that the administration bill will achieve this objective both more quickly and effectively than the committee bill and for that reason we intend to give it our complete support on the floor of the House.

William H. Ayres.
John N. Erlenborn.
John Dellenback.
Edwin D. Eshleman.
William A. Steiger.
Earl F. Landgrebe.
Orval Hansen.
Earl B. Ruth.

SEPARATE MINORITY VIEWS OF CONGRESSMAN COLLINS

What this country needs today is more laws regarding civil responsibilities and less law regarding civil rights. All that civil law on rights achieves is more litigation.

Last week I saw a public service television spot that ran a full minute on the eight ball. It asks you to write Washington if you are behind the eight ball, being mistreated and not getting a fair shake. It almost suggests to you that whoever or wherever you are, that you are behind the eight ball and being persecuted.

How can we develop friendly working relations in America—if we spend so much time preaching hate. Congress has the opportunity to take positive action. Let's not be a "cease and desist" group. Let's become a "Build With Progress" house.

In my hometown last month I visited our biggest technical firm. In my plant visit, I was impressed that a Negro has a better opportunity to be hired than a white man. This firm concentrates on "Build With Progress." They have basic education offered new employees by the company. They have friendly, open working conditions. But, under this law, their procedure may be considered as subject to "cease and desist."

There is already too much overlapping of statutes, regulations, Executive orders and agencies involved in the enforcement of equal employment statutes. I recommend a "No" vote on this bill.

JAMES M. COLLINS.

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